IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA CENTRAL DIVISION

MAYTAG CORPORATION,)	
Plaintiff,)	4:02-CV-10626
vs.)	
U.S. PACIFIC CORPORATION f/k/a,)	ORDER
U.S. Pacific Expo Company,)	
)	
Defendant.)	

U.S. Pacific Corporation initially filed a motion for summary judgment on January 12, 2004. On January 20, 2004, U.S. Pacific Corporation filed a substituted motion for summary judgment. Maytag Corporation resisted the motion on February 2, 2004 and U.S. Pacific Corporation filed a reply on February 19, 2004. The Court had a telephone hearing on May 17, 2004. The motion is now fully submitted.

I. BACKGROUND

The following relevant facts either are not in dispute or are viewed in a light most favorable to the non-moving party.² U.S. Pacific Corporation ("USP") entered into a Trademark License Agreement ("TLA") with the Amana Company in March 2000. Under the TLA, USP was granted an

¹ As discussed at the hearing, Maytag's motion for leave to file supplemental materials in resistance to USP's motion for summary judgment is denied.

² In its response to USP's statement of material facts, Maytag complains that USP's factual statement did not comply with Local Rule 56.1. Because the Court has denied USP's motion for summary judgment it will not address Maytag's allegations.

exclusive ten-year license to manufacture and distribute Amana brand small kitchen appliances in the United States and Canada. In July 2001, Maytag Corporation acquired Amana and became the successor to all of Amana's rights under the TLA.

By letter dated December 10, 2002, Maytag gave USP written notice that it was terminating the TLA effective immediately. On December 10, 2002, immediately following its termination of the TLA, Maytag filed a complaint in this Court seeking a declaratory judgment that it did not breach the TLA. On December 19, 2002, USP responded with a motion for a temporary restraining order and preliminary injunction. The Honorable Robert W. Pratt denied the motion in an order dated December 26, 2002. USP then filed the following counterclaims against Maytag on June 10, 2003: Count I alleging breach of contract; Counts II and III alleging intentional interference with an existing contract and intentional interference with prospective business relations; Count IV alleging fraud and misrepresentation; Count V alleging a violation of the Washington Franchise Investment Protection Act; and Count VI alleging a violation of the Washington Consumer Protection Act. On March 18, 2004, this Court denied Maytag's motion for summary judgment on all of USP's counterclaims. USP now requests that this Court grant summary judgment for USP and find that Maytag, and not USP, breached the TLA.

II. APPLICABLE LAW AND DISCUSSION

A. Summary Judgment Standard

Summary judgment is properly granted when the record, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Walsh v. United States*, 31 F.3d 696, 698 (8th Cir. 1994). The moving party must establish its right to judgment with such clarity there is no room for controversy. *Jewson v. Mayo Clinic*, 691 F.2d 405, 408 (8th Cir. 1982). "[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). An issue is "genuine," if the evidence is sufficient to persuade a reasonable jury to return a verdict for the nonmoving party. *Id.* at 248. "As to materiality, the substantive law will identify which facts are material Factual disputes that are irrelevant or unnecessary will not be counted." *Id.*

B. Whether Maytag Wrongfully Terminated the TLA

In the present case, Maytag's December 10, 2002 letter purported to terminate the TLA "effective immediately" pursuant to § 9.2 and § 9.3 and "other provisions of the Agreement." USP's Motion for Summary Judgment, App. at 339. The parties do not appear to disagree that Maytag's December 10, 2002 letter was the first written notice of an alleged material breach of the TLA. USP now contends that it is entitled to summary judgment because Maytag breached the TLA by failing to provide proper written notice and an opportunity to cure prior to terminating the agreement.

1. Section 9.2

USP first asks this Court to find that Maytag's immediate termination of December 10, 2002 violated § 9.2 of the TLA, as a matter of law, because it failed to provide USP proper written notice and an opportunity to cure. Section 9.2 provides in part:

Breach of Agreement. Except as provided otherwise in Section 9.3, if

either party breaches any material provision of this Agreement and fails to cure the breach within thirty (30) days after receipt of written notice from the non-breaching party specifying the breach, then the non-breaching party may terminate this Agreement upon written notice to the breaching party, which right shall be in addition to, and not in lieu of, all other rights and remedies the non-breaching party may have against the breaching party under this Agreement, at law or in equity.

USP's Motion for Summary Judgment, App. at 13 (emphasis added). Maytag counters that, in addition to its contractual obligations under § 9.2, it maintained a common law right to immediately terminate the TLA for material breaches by USP. Maytag contends that USP's alleged inadequate performance under the contract was of a sufficiently serious nature that it frustrated the essential purpose of the TLA. Maytag suggests that when a termination clause providing for notice and an opportunity to cure is non-exclusive – like § 9.2 – the non-breaching party may terminate the contract for the opposing parties material breach without giving notice and an opportunity to cure.

While Maytag cites several cases in support of this proposition, the Court notes that none of the cases state Texas legal authority.³ *See Olin v. Central Indus.*, 576 F.2d 642, 648 (5th Cir. 1978) (applying Mississippi law); *Southland Corp. v. Froelich*, 41 F. supp. 2d 227, 246 (E.D.N.Y. 1999) (applying New York law). Nevertheless, as noted by Maytag, it is a fundamental principle of Texas contract law that when one party commits a material breach of a contract, the other party has no obligation to continue to perform. *Hernandez v. Gulf Group Lloyds*, 875 S.W.2d 691, 692 (Tex. 1994). In this case, § 9.2 expressly states that the right of termination for material breach upon 30 days

³ The Court has also been unable to find Texas authority on this issue. The TLA contains a Texas choice of law provision. *See* Trademark License Agreement § 10.10, Maytag's Motion for Summary Judgment, App. at 10. The parties do not contest the enforceability of this provision.

notice and failure to cure "shall be in addition to, and not in lieu of, all other rights and remedies the non-breaching party may have against the breaching party under this Agreement, at law or in equity." USP's Motion for Summary Judgment, App. at 13. The Court finds that there nothing in § 9.2 that would preclude Maytag from exercising its common law contractual rights.

Under these circumstances, the Court cannot find, as a matter of law, Maytag violated § 9.2 by terminating the TLA for alleged material breaches by USP. Ultimately, the question of whether Maytag violated § 9.2 will depend on whether USP's alleged deficiencies constitute a material breach of the TLA. The question of the materiality of a breach, however, is normally one of fact and will need to be determined, in this case, by the jury. *See* Williston on Contracts s 44:55, Relationship to Material Breach (2003). For the aforementioned reasons, USP's motion for summary judgment is denied with respect to this issue.

2. Section 9.3

USP also contends that Maytag's termination of the agreement on December 10, 2002 violated § 9.3 of the TLA. The relevant portion of Section 9.3 provides:

<u>Immediate Termination</u>. Except as provided otherwise in Section 9.4 [Maytag] may immediately terminate this Agreement, upon written notice to [USP], upon the occurrence of any one or more of the following events: (a) either [USP] breaches any provisions of [Article III]. . ..

USP's Motion for Summary Judgment, App. at 13. USP now moves for the summary judgment on the grounds that Maytag violated the TLA because immediate termination pursuant to § 9.3 and Article III was only permissible if Maytag first gave formal written notice that it was dissatisfied with product quality and USP failed to cure or redesign the defects. As Maytag points out, however, the contract

language requiring formal notice prior to termination appears only in §§ 3.3(b), (c) and (d), regarding the failure of the products themselves to satisfy Maytag's standards. According to the Complaint, Maytag believes that its immediate termination of the TLA was permissible under § 9.3 because it was based, at least in part, on USP's failure to fulfill its obligation to allow Maytag to inspect under §3.3(a), which does not contain a notice requirement. Maytag's Complaint at 13-14. Section 3.3(a) provides:

(a) Representatives of [Maytag] shall have the right at all reasonable times to inspect the Products as well as the methods of manufacture of the Products on the premises of [USP] and elsewhere, in order to carry out the purposes of inspection as part of appropriate quality control.

USP's Motion for Summary Judgment, App. at 10. Maytag contends that USP failed to provide certain documents requested by Maytag for use in reviewing the quality and safety of the USP products. Maytag argues that USP's failure to provide these documents limited Maytag's ability to fully evaluate the quality, safety and reliability of USP's products and as a result Maytag was effectively denied its right to inspect. USP denies both the importance of these documents and that it was required to provide them under § 3.3(a). It does not deny, however, that all requested documentation was not provided. Under these circumstances, the Court finds that questions about the document production raise genuine issues of fact as to whether USP's alleged failure to provide the requested documentation constitutes a breach of § 3.3(a).

USP also disagrees with Maytag's allegation that immediate termination was permissible under § 9.3 because it was based, in part, on USP's failure to fulfill its obligations under § 3.3(c) and (d). The fundamental question with respect to § 3.3(c) and (d) is whether informal communications between the parties prior to Maytag's termination on December 10, 2002 qualified as "notice", or

whether formal, written notice was required. Because the Court has found a genuine issue of material fact with regard to USP's alleged breach of § 3.3(a), it need not decide at this juncture whether Maytag was in breach for failing to provide formal written notice of its immediate termination of the TLA.

For the aforementioned reasons, the Court cannot find as a matter of law that Maytag breached § 9.3 by immediately terminating the TLA and it is inappropriate for the Court to render summary judgment. Accordingly, USP's motion for summary judgment is denied with respect to this issue.

III. CONCLUSION

For the reasons outlined above, USP's motion for summary judgment is DENIED with respect its claim for wrongful termination based on § 9.2 of the TLA. USP's motion is also DENIED with respect to its claim for wrongful termination based on § 9.3 of the TLA.

IT IS SO ORDERED.

Dated this 18th day of May, 2004.

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